



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

January 22, 2004

Ivor R. Elrifi
Mintz Levin Cohn Ferris
Glovsky & Popeo
One Financial Center
Boston, MA 02111

In re application of:
Jeffers, et al DECISION ON PETITION
Serial No: 09/992,840
Filed: November 6, 2001
For: TREATMENT OF INFLAMMATORY BOWEL DISEASE
USING GROWTH FACTORS

This is a decision on the petition received by fax on September 23, 2003, to withdraw the holding of abandonment in the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. 1.113 in timely manner to the Notice to File Missing Parts of Nonprovisional Application on December 5, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned February 6, 2002

On September 23, 2003, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney never received the Notice to File Missing Parts of Nonprovisional Application mailed on December 5, 2001.

The petition is hereby GRANTED.

A new Notice to File Missing Parts of Nonprovisional Application is enclosed with this decision setting forth a response period of two months from the date of the notice.

The Office regrets any inconvenience this may have caused the client.

Telephone inquiries concerning this matter may be directed to Doshie E. Day
(703) 308-3640.

Doshie E. Day
Program Management Assistant
Office initial Patent Examination

2 Enclosures

Express Mail Label No.: EV 074977235 US

Date of Deposit: September 23, 2003

Attorney Docket No. 15966-557A (Cura-57A)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Jeffers, et al.
ASSIGNEE : CuraGen Corporation
SERIAL NUMBER : 09/992,840
FILING DATE : November 6, 2001
FOR : TREATMENT OF INFLAMMATORY BOWEL DISEASE USING GROWTH FACTORS
EXAMINER : Not Yet Assigned
ART UNIT : Not Yet Assigned

MAIL STOP PETITION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313.1450

TRANSMITTAL LETTER

Transmitted herewith for filing in the present application are the following documents:

- ☒ Petition Under 37 C.F.R. §1.181 to Withdraw Holding of Abandonment (3 pages);
- ☒ Exhibit A: Declaration of Richard R. Tomlins (3 pages);
- ☒ Exhibit B: CPI report (2 pages)
- ☒ Exhibit C: Copy of postcard for original application (1page)
- ☒ postcard.

Applicants believe that no fees are due in connection with this submission. However, the Commissioner is authorized to credit any overpayment or charge any deficiencies to Deposit Account No. 50-0311, Reference No. 15966-557A (Cura 57A). A duplicate copy of this transmittal letter is enclosed.

Respectfully submitted,

Ivor R. Elrifi, Reg. No. 39,529
Kristin E. Konzak, Reg. No. 44,848
Attorney/Agent for Applicants
c/o MINTZ, LEVIN
Tel: (617) 542-6000
Fax: (617) 542-2241

Date: September 23, 2003

Please address all correspondence to Customer Number 30623.

Express Mail Label No.: EV 074977235 US

Date of Deposit: September 23, 2003

Attorney Docket No. 15966-557A (Cura-57A)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Jeffers *et al.*

SERIAL NUMBER: 09/992,840

EXAMINER: Not yet Assigned

FILING DATE: November 6, 2001

ART UNIT: Not yet Assigned

FOR: TREATMENT OF INFLAMMATORY BOWEL DISEASE USING GROWTH FACTORS

September 23, 2003

Boston Massachusetts

MAIL STOP PETITION

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. § 1.181 TO
WITHDRAW HOLDING OF ABANDONMENT**

1. This paper is in response to a conversation held between the undersigned and a Customer Service Representative in the Office of Initial Patent Examination Division of the U.S. Patent and Trademark Office on August 14, 2003. The Representative indicated that the present application is considered abandoned in view of Applicants' failure to timely file a reply to the Notice to File Missing Parts mailed on December 5, 2001.

2. The undersigned asserts that a full search of the file jacket and docket records for the above-referenced application indicates that the Notice to File Missing Parts was never received by this office. Thus, no Notice to File Missing Parts was ever docketed for response.

3. Applicants therefore respectfully submit that any consideration of Abandonment of the present application is in error, and that such considerations be withdrawn.

4. The statements below are made as to the exact facts that are relied upon to establish the non-receipt of the Notice to File Missing Parts by the office of the Attorney of Record.

5. On November 6, 2001, Attorneys for Applicants filed a Request for a Nonprovisional Application under 37 C.F.R. § 1.53(b) and an unexecuted Combined Declaration and Power of Attorney instructing the Office to address all telephone calls and general correspondence to the undersigned at the address listed therein (same as below). A postcard listing the contents of the filing was also sent and was duly returned bearing a label affixed by the Office indicating an application number of 09/992,840 and as having been received on 11/06/01.

6. A file was created according to the procedures outlined in the Declaration of Mr. Richard Tomlins (Exhibit A).

7. In response to a foreign associate's request for the assignment papers of the present application, on or about July 31, 2003, it came to the undersigned's attention that no correspondence pertaining to this application had yet been received from the Patent Office, including the Official Filing Receipt, Missing Parts, or a Notice of Abandonment.

8. In rendering a decision on this Petition, Attorneys for Applicants also request that the Commissioner consider the following sequence of events: a Notice to File Missing Parts provides two months from the mailing date in which to file a response, for which extensions may be had for an additional five months. Assuming that the Notice to File Missing Parts was mailed on December 5, 2001, as indicated by the Customer Service Rep., the nonextendable deadline to respond would have occurred on July 5, 2002. Presumably a Notice of Abandonment would have been received within several months thereafter. In the instant case, however, no papers have been received even one year after the nonextendable deadline for response had passed. The undersigned respectfully asserts that this time span represents an unusually long delay and supports Applicants' contention that the Notice to File Missing Parts was not received, and therefore could not be replied to in order to avoid abandonment.

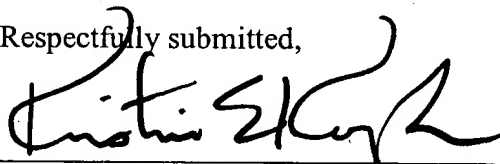
9. Under the requirements set forth in 37 C.F.R. § 1.181, the following documents are submitted herewith in support of this Petition:

- 9.1 a declaration of Mr. Richard Tomlins, Patent Manager for the Offices of the Attorneys of Record (Exhibit A);
- 9.2 a true copy of the docket record for 15966-557 A, as required by MPEP § 711.03(c), Part II (Exhibit B); and
- 9.3 a true copy of the return postcard submitted with the present application on November 6, 2001, bearing an official U.S. PTO bar code acknowledging receipt of the items listed thereon on that date (Exhibit C).

10. No fees are believed due with the submission of this Petition. However, the Commissioner is hereby authorized to charge any necessary fees that may be due to Account No. 50-0311, Reference No. 15966-557A (Cura-57A).

11. Applicant respectfully requests that acknowledgement be made of the active status of this application. Should the Commissioner have any questions concerning this petition, he is invited to telephone the undersigned at the number provided.

Respectfully submitted,



Ivor R. Elrifi, Reg. No. 39,529
Kristin E. Konzak, Reg. No. 44,848
Attorney/Agent for Applicants
MINTZ LEVIN COHN FERRIS
GLOVSKY & POPEO P.C.
One Financial Center
Boston, MA 02111
Tel: (617) 542-6000
Fax: (617) 542-2241

Please address all correspondence to Customer No.: 30623.

TRA 1827104v1

Express Mail Label No.: EV 074977235 US
Date of Deposit: September 23, 2003

Attorney Docket No. 15966-557A (Cura-57A)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Jeffers *et al.*
SERIAL NUMBER: 09/992,840 EXAMINER: Not yet Assigned
FILING DATE: November 6, 2001 ART UNIT: Not yet Assigned
FOR: TREATMENT OF INFLAMMATORY BOWEL DISEASE USING GROWTH FACTORS

September 23, 2003
Boston Massachusetts

MAIL STOP PETITION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF RICHARD R. TOMLINS II UNDER 37 C.F.R. §1.68 IN SUPPORT
OF RULE 181 PETITION TO WITHDRAW HOLDING OF ABANDONMENT**

I, Richard R. Tomlins II, hereby declare as follows:

1. My name is Richard R. Tomlins II, and I am the Patent Manager for the law firm of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo P.C., with offices at One Financial Center, Boston, MA 02111. I make this Declaration based on personal knowledge and in support of the accompanying Request to Withdraw Notice of Abandonment in the above-identified application.
2. I have over 7 years of experience in U.S., PCT, and foreign patent procedures. I am currently responsible for implementing and overseeing the file room and docketing procedures in the Intellectual Property section within Mintz Levin. I am very familiar with these procedures and attest that they are functioning on a routine basis. Below is an outline of the procedures followed by the docketing and file room:
3. Attendant to its Intellectual Property Practice, Mintz Levin has implemented a filing and docketing system whereby files are created for each new matter opened with the USPTO. These

files are then assigned to one or more supervising and responsible attorneys. These files house the record of correspondence between the Office and the attorneys of record, and between the Applicant and the attorneys. For each application, Combined Declarations and Powers of Attorney specifically instruct that all correspondence be mailed to the Attorneys for Applicant. All outside mail, including Actions sent from the USPTO, is received in a central location. It is then date stamped, logged into a spreadsheet, and docketed into a central database ("CPI") shortly after receipt. The Action is subsequently forwarded to the responsible attorney or his/her secretary via hand. Weekly docket reports are prepared for each attorney listing the days on which various actions are due.

4. Upon filing a response to an Action from the USPTO, the attorney or his/her secretary concurrently forwards duplicate paperwork to the docketing department so that the Action for which a response was filed will be de-docketed from the date-due list.

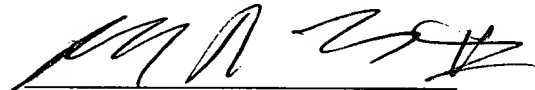
5. On November 6, 2001, the procedures outlined above were followed in this instance and a file was created for the above identified patent application bearing Attorney Docket No. 15966-557 A (Cura-57A). The information was also entered into the central computer database.

6. A full search of the mail, the spreadsheet, the file jacket for 15966-557A, and of the docket records indicates that Mintz Levin has never received a Notice to File Missing Parts in the above-identified application. The Action has never been entered on our central database and has never been included within the weekly docketing reports. No correspondence from the USPTO pertaining to this application has ever been docketed in our central database.

7. Pursuant to MPEP § 711.03(c), Part II, true copies of the docket record for the above-referenced application are enclosed for consideration. These copies show, under the heading "List of Actions", where the Notice to File Missing Parts would have been entered and docketed had it been received.

7. All statements made of my own knowledge are true, and all statements made on information and belief are believed to be true. The statements made herein are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,



Date: September 23, 2003

Richard R. Tomlins II
Patent Manager
c/o MINTZ LEVIN COHN FERRIS
GLOVSKY & POPEO, P.C.
One Financial Center
Boston, MA 02111
(617) 542-6000

Please address all correspondence to Customer No.: 30623.

TRA 1827222v1

Country Application

Tuesday, August 26, 2003

Page: 1

Docket Number: 15966-557 A	SubCase:	Country: US
Client: 15966 CuraGen Corporation		United States of America
Resp. Office: MA		
Case Type: PRI	Application Status: Pending	
Serial Number: 09/992840	Filing Date: 06-Nov-2001	
Publication Number:	Publication Date:	
Patent Number:	Issue Date:	
Parent/PCT Number:	Parent/PCT Date :	
Parent Patent Number:	Parent Issue Date :	
Tax Schedule: SE	Expiration Date:	
Confirmation Number:	Patent Term Adjustment: 0	
Agent:		
Agent Reference No.:		
Client Reference No.: CURA-57 A		
Examiner:	Group Art :	

Title: TREATMENT OF INFLAMMATORY BOWEL DISEASE GROWTH FACTORS

List Of Actions

Action(s) Due	Due Date	Action Taken
Filing Receipt Rec'd?	06-Feb-2002	Due Date

User ID: JABligh

Date Created: 09-Nov-2001

Last Update: 22-Jul-2003

Country Application

Tuesday, August 26, 2003

Page: 1

Docket Number: 15966-557 A	SubCase:	Country: US
Client: 15966 CuraGen Corporation		United States of America
Resp. Office: MA		
Case Type: PRI	Application Status: Pending	
Serial Number: 09/992840	Filing Date: 06-Nov-2001	
Publication Number:	Publication Date:	
Patent Number:	Issue Date:	
Parent/PCT Number:	Parent/PCT Date :	
Parent Patent Number:	Parent Issue Date :	
Tax Schedule: SE	Expiration Date:	
Confirmation Number:	Patent Term Adjustment: 0	
Agent:		
Agent Reference No.:		
Client Reference No.: CURA-57 A		
Examiner:	Group Art :	

Title: TREATMENT OF INFLAMMATORY BOWEL DISEASE GROWTH FACTORS

List Of Actions

Action(s) Due	Due Date		Action Taken
Filing Receipt Rec'd?	06-Feb-2002	Due Date	
Information Disclosure Stmt	06-Feb-2002	Due Date	18-Jul-2002
Foreign 8M Letter	06-Jul-2002	Due Date	05-May-1955
Foreign 10M Reminder	06-Sep-2002	Due Date	05-May-1955
Foreign 11M Reminder	06-Oct-2002	Due Date	05-May-1955
FOREIGN 12M DEADLINE	06-Nov-2002	Final	05-May-1955
Application Status Check	06-May-2003	Due Date	05-May-1955

User ID: JABligh

Date Created: 09-Nov-2001

Last Update: 22-Jul-2003

Serial No. TBA File No. 15966-557A By: IRE/DEJ
(CURA-57A)
Title: Treatment of Inflammatory Bowel Disease Growth . . .
Application of Jeffers et al. Date: 11/6/01

The U.S. PTO Mail Room acknowledges receipt of the following on the date stamped hereon:

<input type="checkbox"/> Req. for CPA under 37 CFR 1.53(d)	<input type="checkbox"/> Provisional Application Cover Sheet
<input type="checkbox"/> Change of Attorney's Address	<input type="checkbox"/> Inf. Discl. Statement, PTO Form 1449
<input type="checkbox"/> New Power of Attorney	<input type="checkbox"/> References Cited
<input checked="" type="checkbox"/> Patent Application	<input type="checkbox"/> Copy of Notice to File Missing Parts
<input checked="" type="checkbox"/> Non-provisional <input type="checkbox"/> Provisional	<input type="checkbox"/> Amendment/Response
Incl. <u>145</u> pages, (<u>137</u> pgs) Specification,	<input type="checkbox"/> Petition for Ext. of Time (x2)
(<u>1</u> pgs) Abstract, (<u>7</u> pgs) Claims (<u>45</u> # claims)	<input type="checkbox"/> Issue Fee Transmittal
<input type="checkbox"/> Design Patent Application	<input type="checkbox"/> Letter to Official Draftsperson
<input checked="" type="checkbox"/> Declaration(s) <u>unexecuted</u>	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Drawings <u>43</u> sheet(s) (FIGS. <u>1</u> - <u>63</u>)	<input type="checkbox"/> Brief (x3)
<input type="checkbox"/> Formal <input checked="" type="checkbox"/> Informal	<input checked="" type="checkbox"/> Check for \$ <u>679.00</u> Check # <u>10748</u>
<input type="checkbox"/> Verified Statement claiming small entity status	<input checked="" type="checkbox"/> Transmittal Letter (x2)
<input type="checkbox"/> Assignment and Cover Sheet	<input type="checkbox"/> Cert. of Mailing under 37 CFR 1.8(a)
	<input checked="" type="checkbox"/> Express Mail Label No. <u>EK005154057US</u>
<input type="checkbox"/> Other _____	

DATE MAILED 11/6/01

Jc825 U.S. PTO
09/992840
11/06/01